Supreme Court, U.S.
FILED
JUL 7 1995
CLERK

(2)

No. 94-2010

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1994

GERALD J. BROWN, SR.

Petitioner

vs.

MAINTENANCE & INDUSTRIAL SERVICES, INC.; WES NICHOLS, TERRY COLEMAN, FLUOR DANIEL, INC., MICHAEL WRIGHT, FLUOR CORP., INC., V. L. KONTNY,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

RESPONDENTS' BRIEF IN OPPOSITION

RICHARD R. PARKER
WILLIAM S. RUTCHOW
Counsel of Record
OGLETREE, DEAKINS, NASH, SMOAK & STEWART
Attorneys for Respondents
500 Church Street, Fifth Floor
Nashville, TN 37219
(615) 254-1900

BEST AVAILABLE COPY

18 pp

TABLE OF CONTENTS

Page

Table of Contents i

Table of Authorities ii

Opinions Delivered Below 2

Statement of the Case 2

Summary of the Argument 4

Argument 4

Conclusion 9

TABLE OF AUTHORITIES

Cases Cited:

Allard v. Weitzman (In re DeLorean Motor Co.),
991 F.2d 1236 (6th Cir. 1993) 5

Baker's Union Factory No. 326 v. ITT Continental Baking Co.,
749 F.2d 350 (6th Cir. 1984) 7

Coughran v. Bigelow,
164 U.S. 301 (1896) 6

Hishon v. King & Spalding,
467 U.S. 69 (1984) 5

McDonnell Douglas Corp. v. Green,
411 U.S. 792 (1973) 6

McKennon v. Nashville Banner Publishing Co.,
__U.S.__, 115 S.Ct. 879, 130 L.Ed2d 852 (1995) 7, 8

Miree v. DeKalb County,
433 U.S. 25 (1977) 8

Contents

Page

Parklane Hosiery Co. v. Shore,
439 U.S. 322 (1979) 5

United Housing Foundation, Inc. v. Forman,
421 U.S. 837 (1975) 6

United Paperworkers, Int'l Union, AFL-CIO v. Misco, Inc.,
484 U.S. 29 (1987) 6

United States Constitution:

Fourth Amendment 2

Fourteenth Amendment 2

Statutes:

29 U.S.C. §621 9

42 U.S.C. §1983 2

42 U.S.C. §1988 2

42 U.S.C. §2000e 9

45 U.S.C. §36 2

45 U.S.C. §43 2

45 U.S.C. §54 2

Tenn. Code Ann. §50-3-101 2

Rules:

Supreme Court Rule 10 9

Supreme Court Rule 14 8

Federal Rule of Civil Procedure 12(b)(6) 4, 5

No. 94-2010

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1994

GERALD J. BROWN, SR.

Petitioner

vs.

MAINTENANCE & INDUSTRIAL SERVICES, INC.; WES NICHOLS, TERRY COLEMAN, FLUOR DANIEL, INC., MICHAEL WRIGHT, FLUOR CORP., INC., V. L. KONTNY,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

RESPONDENTS' BRIEF IN OPPOSITION

TO THE HONORABLE SUPREME COURT:

The respondent, Maintenance & Industrial Services, Inc.; Wes Nichols, Terry Coleman, Fluor Daniel, Inc., Michael Wright, Fluor Corp., V.L. Kontny, respectfully requests that this Court deny the Petition for Writ of Certiorari submitted by Petitioner, Gerald J. Brown, Sr.

OPINION DELIVERED BELOW

In addition to the opinions and orders that are appended to the Petition, respondents append the Memorandum of Chief Judge John T. Nixon, United States District Judge, as Appendix A. This Memorandum was entered on January 18, 1994, in support of Judge Nixon's Order granting respondents' Motion to Dismiss.

STATEMENT OF THE CASE

Petitioner, Gerald J. Brown, is a unionized employee of respondent, Maintenance & Industrial Services, Inc. ("MISI").[1] On November 20, 1992, while Brown was working for MISI, Brown was terminated for sleeping on the job. Brown filed a union grievance to protest his termination. Petitioner alleged as the only basis for his grievance that he was terminated in retaliation for his filing of an earlier grievance (Petition at 10).

Brown's grievance was denied, and eventually the grievance was referred to binding arbitration pursuant to the collective bargaining agreement in effect between the parties. At the arbitration hearing, Brown alleged that MISI had retaliated against him for his union activities. Brown also alleged, for the first time, that MISI had discriminated against him based upon his age, race, and religion.

In addition to his grievance, Brown filed charges with the National Labor Relations Board (NLRB) and the Equal Employment Opportunity Commission (EEOC). Brown also filed this action in the United States District Court for the Middle District of Tennessee, alleging age, race, and religious discrimination, discrimination based upon his union activities, and claims under the Fourth and Fourteenth Amendments to the Constitution, 42 U.S.C. §§1983, 1988; 45 U.S.C. §§36, 43, 54; and Tenn. Code Ann. §50-3-101, *et seq.*

Following a hearing in which both parties presented witnesses, a written arbitration decision was issued on August 9, 1993, by Arbitrator James J. Odom, Jr. (Petition, Appendix G). Although

---

1 MISI and Fluor Daniel, Inc. are subsidiaries of Fluor Corporation.

Arbitrator Odom found that the severity of the company's decision, termination, was too harsh, Arbitrator Odom went on to find:

> [N]evertheless, the grievant was not blameless and is due a reasonable penalty. He will forfeit backpay. . . . I find no evidence whatsoever that the punishment was rendered because of discrimination — either racial or Union. The record contains such charges made by the grievant, but after all the testimony, the charges are unproven, bare allegations.

(Petition, Appendix G at 19). Accordingly, petitioner was reinstated with the company without backpay. After reviewing the arbitrator's award, the NLRB refused to issue a complaint and dismissed the charge on September 3, 1993. On September 27, 1993, the EEOC similarly concluded that the company's termination decision did not establish a violation based upon age or racial discrimination.[2]

The district court agreed with the arbitrator, the NLRB, and the EEOC that Brown's allegations of discrimination by MISI and the other respondents were meritless. The district court dismissed Brown's claim in an Order and Memorandum entered on January 18, 1994 (Order - Appendix D, Petition; Memorandum - Appendix A, Respondent's Brief in Opposition). On February 9, 1995, the Sixth Circuit Court of Appeals affirmed the district court's order granting the respondents' motion to dismiss for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure (Petition, Appendix A).

Significantly, petitioner never used the parties' contractual grievance procedure for any complaints of disparate treatment based upon his membership in a protected class. Petitioner availed himself of the parties' grievance procedure immediately following his termination, raising only the claim that his discharge was motivated by retaliation due to his earlier-filed grievance. This grievance went through the arbitration process, and the company abided by the arbitrator's decision to reinstate petitioner.

---

2 Petitioner's EEOC charge did not include any claim of religious discrimination.

Petitioner is currently working at MISI pursuant to the arbitrator's decision. The arbitrator, the NLRB, the EEOC, the district court, and the Sixth Circuit have unanimously concluded that petitioner was not a victim of employment discrimination. The numerous and unanimous decisions of the arbitrator, the NLRB, the EEOC, the district court, and the Sixth Circuit are strong evidence that the claims pursued by petitioner are frivolous, unreasonable, and do not provide the Court with special and important reasons for granting the petition.

SUMMARY OF ARGUMENT

The district court and the Sixth Circuit dismissed petitioner's action for failure to state a claim. While petitioner complains that this dismissal denied him a jury trial, petitioner does not provide the Court with any basis to determine that the lower courts incorrectly invoked Rule 12(b)(6) of the Federal Rules of Civil Procedure. Further, petitioner does not offer any reason why the lower courts should have disturbed the decision of the arbitrator or why this Court should reexamine the lower courts' deference to the arbitrator's decision.

Petitioner's attempt to create a conflict among the circuits also must fail. Petitioner's reliance on the after-acquired evidence doctrine is misplaced. The alleged conflict among the circuits based on this doctrine has already been resolved by the Court. Further, respondents have never raised an after-acquired evidence defense in this case.

Finally, the petitioner's failure to present with accuracy, brevity, and clearness those matters that are essential to a ready and adequate understanding of the points requiring consideration is a sufficient reason to deny the Petition.

ARGUMENT

1) The Petition Fails To Address the Lower Courts' Reasons for Dismissing Petitioner's Claims.

a) Dismissal of petitioner's claims did not impermissibly deny him his right to a jury trial.

Petitioner complains that his demands for a jury trial have been ignored (Petition at 4-5). This complaint illustrates petitioner's basic misunderstanding of the statutes and rules he attempts to invoke. Petitioner does not allege that the district court applied an improper standard in its review of respondents' motion to dismiss, nor does petitioner claim that the Sixth Circuit's affirmation of this dismissal was inconsistent with prior decisions of this Court, or that the Sixth Circuit applied an incorrect standard of review.

Petitioner apparently believes that his compliance with Rule 38 of the Federal Rules of Civil Procedure — typing "jury demand" on his complaint — entitles him, without more, to a jury trial, regardless of the merits of his claims. Petitioner clearly does not understand the nature of Rule 12(b)(6).

The Court has established that, when ruling on a motion to dismiss under Rule 12(b)(6), the federal courts are to apply a liberal standard. A court must construe the complaint in a light most favorable to the plaintiff, accept all the factual allegations as true, and determine whether the plaintiff can prove any set of facts in support of his claims that would entitle him to relief. *See Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984). Although this standard is liberal, it does require more than the bare assertion of legal conclusions or the citation of constitutional or statutory provisions that have no application to the alleged facts. *See Allard v. Weitzman (In re DeLorean Motor Co.)*, 991 F. 2d 1236, 1240 (6th Cir. 1993). The Sixth Circuit applied the standard this Court has established to Brown's complaint in this action and found that the facts alleged in the complaint would not support a claim under any viable legal theory (See Petition, Appendix A at 4).

The Sixth Circuit's decision to uphold the district court's dismissal of the complaint did not deny petitioner his right to a jury trial. Petitioner received the process due him when he was afforded the opportunity to respond to respondents' motion to dismiss and correct the defects in his complaint. When petitioner's complaint failed to state a claim as a matter of law, no further proceedings before a jury could have enabled the plaintiff to prove any set of facts that would entitle him to relief. *See generally, Parklane*

Hosiery Co. v. Shore, 439 U.S. 322 (1979) (grant of summary judgment under Rule 56 does not deny plaintiff's right to jury trial); *Coughran v. Bigelow,* 164 U.S. 301 (1896) (granting non-suit for want of sufficient evidence is not infringement of constitutional right of trial by jury).

Petitioner's allegations involve broad complaints of inconsistent enforcement of company policy in violation of Title VII and, despite the absence of state action, denial of due process and other constitutional rights. This Court set forth the core elements upon which relief can be granted under Title VII in *McDonnell-Douglas Corp. v. Green,* 411 U.S. 792 (1973). The district court and the Sixth Circuit ruled that petitioner had failed to allege facts necessary to establish a *prima facie* case of discrimination under *McDonnell-Douglas.* In its opinion, the Sixth Circuit found that "Brown's allegations of conspiracy and his general attack on the company's policies in regard to minorities are mere conclusory allegations not sufficient to withstand the defendants' motion to dismiss." *Id. See also United Housing Foundation, Inc. v. Forman,* 421 U.S. 837, 860 n. 27 (1975) (vague and conclusory allegations under Civil Rights Act, 42 U.S.C. §1983, must be dismissed).

Petitioner does not address the deficiencies in his complaint that led the district court and the Sixth Circuit to dismiss the complaint. In particular, petitioner makes no attempt to refute the Sixth Circuit's straightforward proposition that "no jury trial is necessary when the matter may be dismissed on the pleadings." Rather, the Petition rehashes the allegations of his complaint that the lower courts found wanting.

b) Petitioner cannot now attack the grievance and arbitration provisions of the parties' collective bargaining agreement.

Petitioner spends a significant amount of energy disputing the findings of the arbitrator. What petitioner does not do is provide any reason why the Court should disturb the arbitrator's findings or reexamine the Court's established standard of review for examination of arbitration awards. Under the standard, established in *United Paperworkers, Int'l Union, AFL-CIO v. Misco, Inc.,* 484

U.S. 29 (1987), the arbitrator is charged with finding facts and the court may not reject such findings simply because it disagrees with them. 484 U.S. at 38. The deference of courts to the judgment of arbitrators is designed to promote the finality of arbitration. *Id.* Thus, the arbitrator's decision may not be reversed unless it is clearly erroneous. *Baker's Union Factory No. 326 v. ITT Continental Baking Co.*, 749 F.2d 350, 353 (6th Cir. 1984). Petitioner offers no reasons why the Court should revisit this issue.

Petitioner availed himself of the grievance procedure immediately following his termination with regard only to the claim that his discharge was motivated by retaliation due to his earlier-filed grievance. This grievance went through the arbitration process, and respondents abided by the arbitrator's decision to reinstate petitioner. Although petitioner disagrees with the lower courts' deference to the arbitrator's findings, petitioner offers no legitimate reason why it would be necessary for the Court to review these decisions.

2) Petitioner's Attempt to Invoke the After-Acquired Evidence Doctrine is Totally Misplaced.

Petitioner's third question for review attempts to fit this case into the "after-acquired evidence" mold. The Court set the parameters for the after-acquired evidence defense in *McKennon v. Nashville Banner Publishing Co.*, __U.S.__, 115 S.Ct. 879, 130 L.Ed 2d 852 (1995). The after-acquired evidence doctrine considers whether a wrongfully discharged employee may be denied recovery, in whole or in part, when, after the employee's discharge, the employer discovers evidence of wrongdoing that would have "led to the employee's termination on lawful and legitimate grounds." *McKennon*, 115 S.Ct. at 882. Petitioner's only stated reason that the Court should grant his petition is based on this doctrine. Petitioner erroneously argues that a conflict now exists between the circuits over the after-acquired evidence doctrine (Petition at 10-15).

Petitioner's attempt to seek the Court's review on the basis of the after-acquired evidence doctrine fails for three reasons.

a) This is not an after-acquired evidence case.

Petitioner was originally disciplined for sleeping on the job. Respondents have never asserted that after they disciplined Brown they discovered evidence of wrongdoing, other than sleeping, that would have led to petitioner's discipline in any event.

b) The petitioner failed to raise his after-acquired evidence argument in the lower courts.

Brown's Petition to the Court represents the first time that he has raised an argument based upon the after-acquired evidence doctrine. The Court does not customarily consider issues neither argued nor briefed in the district court or the court of appeals. *See Miree v. DeKalb County,* 433 U.S. 25, 34 (1977).

c) The alleged conflict is illusory.

The Court resolved the conflict petitioner claims exists among the circuits in the very case petitioner cites in support of his imagined conflict, *McKennon v. Nashville Banner Publishing Co.,* 115 S.Ct. at 883. ("We granted certiorari . . . to resolve conflicting views among the Courts of Appeals on the question of whether all relief must be denied when an employee has been discharged in violation of the ADEA and the employer later discovers some wrongful conduct that would have led to discharge if it had been discovered earlier"). Petitioner appears to ask the Court to ignore its decision in *McKennon* and use his case, which does not include the assertion of an after-acquired evidence defense, to resolve the conflict that existed prior to the *McKennon* decision.

3) The Petition Violates Rule 14 of the Rules of the Supreme Court.

In addition to the foregoing substantive arguments, the form of the Petition requires that the Court deny the Petition. Rule 14.5 of the Rules of the Supreme Court states that a petitioner's failure to present an accurate and clear brief is sufficient reason to deny the petition. *See* Supreme Court Rule 14. The Petition's primary flaw is that it lacks clarity.

a) The Petition contains confusing and incomplete statutory citations.

Two of petitioner's questions for review allege racial discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, *et seq.* *See* Petition at i. Petitioner's questions for review do not allege age discrimination or mention the Age Discrimination in Employment Act, (ADEA), 29 U.S.C. §621, *et seq.* Petitioner then fails to set forth the pertinent text of Title VII as required under Rule 14.1(f) but does later quote from the ADEA, 29 U.S.C. §621, *et seq.*, in the "Constitutional and Statutory Provisions Involved" section of the Petition.

These references illustrate a more general problem with the Petition. The petition is a jumble of citations to various state statutes, federal statutes, and Constitutional provisions with little or no explanation for how those laws apply to petitioner's claim.

b) The facts alleged in the Petition are misleading.

The facts that are set forth in the petition are misleading and incomplete. For example, petitioner alleges that the arbitrator called him a "possum" and he considered this a racial slur. In fact, the arbitrator's reference to "possum" was a reference to "playing possum," *i.e.*, pretending to be asleep (Petition, Appendix G at 11). Respondents' statement of the case contains a recitation of the facts of this case respondents believe are pertinent to the Court's consideration of the Petition.

CONCLUSION

It is petitioner's lack of familiarity and understanding of the facts, statutes, and rules upon which he relies that have brought this case to its present posture. The district court and the Sixth Circuit both applied established precedent when they dismissed petitioner's claims. Petitioner does not address any of the bases for the lower courts' dismissal of his claims. The Petition presents no special or important reasons, as mandated by Supreme Court Rule 10, why the Court should grant the Petition for Writ of Certiorari. The lower courts' rulings were correct. The alleged conflict between the circuits no longer exists, and even if it did, this case does not present the issue necessary to resolve the perceived conflict. Respondents respectfully request that the Petition be denied.

Respectfully submitted,

Richard R. Parker
William S. Rutchow
Counsel of Record

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART
St. Cloud Corner
500 Church Street, Fifth Floor
Nashville, Tennessee 37219
(615) 254-1900

Attorneys for Respondents
June 30, 1995

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

GERALD J. BROWN, SR.	]	
	]	
vs.	]	No. 3:93-0959
	]	
MAINTENANCE & INDUSTRIAL SERVICES, INC., et al.	]	

MEMORANDUM

Pending before the Court is Defendants Maintenance & Industrial Services, Inc., et al. ["Defendants"]'s Motion to Dismiss (Doc. No. 4), to which Plaintiff has filed a Response (Doc. No. 5) on December 27, 1993. In accordance with the reasoning set forth below, the Court grants Defendants' Motion.

I. BACKGROUND

Plaintiff, Gerald J. Brown, Sr., filed this employment discrimination action under 42 U.S.C. § 2000(e) et seq., Title VII of the Civil Rights Act of 1964, and 29 U.S.C. § 141 et seq., the Labor Management Relations Act of 1947.[1]

Mr. Brown alleges that he was discharged from his job as a maintenance mechanic for Defendant Maintenance & Industrial Services, Inc. [hereinafter "MISI"], because of his age, race, and religion, and in retaliation for his union activities. MISI is the on-site maintenance contractor for Bridgestone (USA), Inc., at its tire production facility in LaVergne, Tennessee.

At all times relevant to the instant action, a collective bargaining agreement (hereinafter "Agreement") was in effect for the parties. The Agreement provided for a three-step grievance procedure

[1] Plaintiff also alleges causes of action under the Fourth and Fourteenth Amendments; 42 U.S.C. §§ 1983 and 1988; 45 U.S.C. §§ 36, 43, and 54; and Tenn. Code Ann. § 50-3-101 et seq. Because the Court finds that Plaintiff does not have a cause of action under any of these statutes or constitutional amendments, the Court does not address Plaintiff's claims under them.

and binding arbitration for all differences not settled satisfactorily by the grievance procedure.

On November 20, 1992, while Mr. Brown was working for MISI, a supervisor and a co-worker observed Mr. Brown with his eyes closed for several minutes. Subsequently, Mr. Brown was terminated for sleeping on the job, which is forbidden under Company rules. MISI has stated that the rule against sleeping on the job is particularly important because employees are continuously exposed to direct high voltage electricity.

Mr. Brown filed a union grievance to protect his termination. Mr. Brown's grievance was denied, and eventually the grievance was referred to arbitration proceedings as provided in the Agreement. On November 30, 1992, Mr. Brown filed a charge with the National Labor Relations Board ["NLRB"], alleging that he had been terminated in retaliation for his union activities. The NLRB held that charge in abeyance pending the outcome of arbitration proceedings. Mr. Brown filed a charge of discrimination with the Equal Opportunity Commission ("EEOC") on December 21, 1992.

On August 9, 1993, an arbitration decision was issued in which Arbitrator James J. Odom, Jr., found MISI's termination decision too harsh. However, Arbitrator Odom also found that Mr. Brown had violated a Company rule and was deserving of some sanction. Arbitrator Odom stated that he found no evidence of discrimination against Mr. Brown on the basis of race or union activities. MISI then reinstated Mr. Brown without back pay.

After the arbitration decision was issued, the NLRB sent a letter to Mr. Brown stating that the NLRB would defer to the arbitrator's award and would not issue a complaint. Although the letter also advised Mr. Brown that he was entitled to seek review of the NLRB's decision, Mr. Brown never sought such review.

On September 27, 1993, the EEOC issued a Right-To-Sue letter to Mr. Brown. The EEOC conducted an investigation into Mr. Brown's allegations, but did not find evidence establishing a statutory violation. Mr. Brown filed the instant action on November 19, 1993.

II. ANALYSIS

A. Title VII Claim

Under 42 U.S.C. § 2000(e) et seq., Title VII of the Civil Rights Act of 1964, it is illegal for an employer to discriminate against any individual with respect to the compensation, terms, or conditions of the individual's employment because of the individual's race, color, religion, sex, or national origin. 42 U.S.C. § 2000(e)-2. In order for an aggrieved employee to bring a claim under 42 U.S.C. § 2000(e), he must first file a timely charge with the EEOC.

To establish a prima facie case of discriminatory termination under Title VII, a plaintiff must show the following: (1) that he is a member of a class entitled to the protection of the Civil Rights Act; 2) that he was discharged without valid cause; and 3) that the employer continued to solicit applications for the vacant position. Morvay v. Maghielse Tool and Die Co., 708 F. 2d 229, 233 (6th Cir. 1983) (citation omitted), cert. denied, 464 U.S. 1011, 104 S.Ct. 534 (1983).

In the present action, the Court finds that Plaintiff has failed to allege any facts indicating unlawful discrimination on the basis of race, age, or religion by Defendants. In particular, Plaintiff has failed to establish that Defendant MISI discharged Plaintiff without valid cause, or that MISI continued to solicit applications for his vacant position. Indeed, the record indicates that the Company reinstated Plaintiff after the arbitrator issued his finding that Plaintiff's misconduct must receive a lesser sanction than termination.

Because Plaintiff has failed to allege facts establishing a prima facie case of employment discrimination under Title VII, the Court grants Defendants' Motion To Dismiss with respect to Plaintiff's Title VII claim.

B. Labor Management Relations Act Claim

Under 29 U.S.C. §§ 171(c) and 173(d), the Labor Management Relations Act of 1947, an employee who seeks to assert contract grievances against his employer must attempt to use the contract grievance procedure agreed upon by the employee and his employer.

Republic Steel Corp. v. Maddox, 379 U.S. 650, 652-53, 85 S.Ct. 614, 616 (1965). Here, the parties were bound by a collective bargaining agreement which provided for a three-step grievance procedure and binding arbitration. Plaintiff utilized the grievance procedures available and is bound by the arbitrator's decision that MISI's termination was not in retaliation for Plaintiff actions in filing an earlier grievance.

To the extent that Plaintiff has now alleged causes of action which exceed the allegations presented in the grievance procedure and through arbitration, the Court dismisses these remaining claims for failure to exhaust the exclusive grievance and arbitration procedures to which he is bound by the collective bargaining agreement.

Because the Court grants Defendants' Motion, the Court does not address Defendants' additional arguments.

III. CONCLUSION

For the above-stated reasons, the Court hereby grants Defendants' Motion To Dismiss. Accordingly, the Court orders that this action be dismissed with prejudice.

An order consistent with the findings herein is filed contemporaneously.

Entered this the 18th day of January, 1994.

JOHN T. NIXON, CHIEF JUDGE
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

GERALD J. BROWN, SR.	]	
	]	
vs.	]	No. 3:93-0959
	]	
MAINTENANCE & INDUSTRIAL SERVICES, INC., et al.	]	

ORDER

Pending before the Court is Defendants Maintenance & Industrial Services, Inc., et al. ["Defendants"]'s Motion To Dismiss (Doc. No. 4), to which Plaintiff has filed a Response (Doc. No. 5) on December 27, 1993.

Consistent with the contemporaneously-filed Memorandum, the Court hereby GRANTS Defendants' Motion To Dismiss. Accordingly, the Court ORDERS that this action be DISMISSED with prejudice.

Entered this the 18th day of January, 1994.

JOHN T. NIXON, CHIEF JUDGE
UNITED STATES DISTRICT COURT